

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:) Chapter 11
)
EASTERN LIVESTOCK CO., LLC,) Case No. 10-93904-BHL-11
)
Debtor.) Hon. Basil H. Lorch III

**MOTION UNDER BANKRUPTCY CODE SECTION 365(d)(4)(B)
FOR AN ORDER EXTENDING THE DEADLINE TO
ASSUME LEASES OF NONRESIDENTIAL REAL PROPERTY**

James M. Knauer, chapter 11 trustee ("Trustee") in the above-captioned case ("Chapter 11 Case") files this *Motion Under Bankruptcy Code Section 365(d)(4)(B) for an Order Extending the Deadline to Assume Leases of Nonresidential Real Property* ("Motion") and requests that the Court enter an order extending the Trustee's deadline to assume or reject leases of nonresidential real property through and including July 26, 2011. Because of the complex nature of this case and the lack of corporate records, the Trustee does not yet know if Eastern Livestock Co., LLC ("Debtor") is a party to one or more nonresidential leases of real property, let alone whether such leases may be necessary for the efficient administration of the estate. The Trustee needs additional time to make that determination. In further support of this Motion, the Trustee states as follows:

Preliminary Background

1. Certain petitioning creditors commenced the above-captioned chapter 11 case ("Chapter 11 Case") against Eastern Livestock Co., LLC ("Debtor") on December 6, 2010 ("Petition Date") by filing an involuntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. ("Bankruptcy Code"). This Court entered the

Order For Relief In An Involuntary Case And Order To Complete Filing [Docket #110] ("Order for Relief") on December 28, 2010.

2. On December 27, 2010, the Court entered the *Order Approving The Appointment Of James A. Knauer As Chapter 11 Trustee* [Docket #102], approving the United States Trustee's *Notice Of Appointment And Application For Order Approving Appointment of Trustee* [Docket #98] pursuant to 11 U.S.C. § 1104.

Jurisdiction

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

4. Venue of the Chapter 11 Case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

5. The statutory basis for the relief requested herein is section 365 of the Bankruptcy Code.

Requested Relief

6. Pursuant to section 365(d)(4)(B)(i) of the Bankruptcy Code, the Trustee seeks an additional 90 days, through and including July 26, 2011, to assume or reject leases of nonresidential real property.

Basis for Relief

7. Section 365(d)(4)(A) of the Bankruptcy Code provides that "subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of (i) the date that is 120 days after the date of the order for relief; or (ii) the

date of the entry of an order confirming the plan." However, section 365(d)(4)(B) of the Bankruptcy Code allows a 90-day extension for cause.

8. Whether to grant an extension under section 365(d)(4)(B) of the Bankruptcy Code is within the discretion of the Court. *See South Street Seaport Ltd. P'ship v. Burger Boys, Inc. (In re Burger Boys, Inc.)*, 94 F.3d 755, 761 (2nd Cir. 1996). The factors to be considered by the court in deciding whether to grant an extension of time within which to reject an unexpired lease of nonresidential real property include:

- a) whether the rent has been or is being paid;
- b) whether the lease is a primary asset of the estate;
- c) potential prejudice to the landlord from noncompensable damages;
- d) whether the landlord will receive a windfall;
- e) whether the case is unusually large or complex; and
- f) whether the trustee or debtor in possession has had a reasonable period of time to analyze the estate and formulate a reorganization plan.

Id. See also *In re PerfectLite Co.*, 116 B.R. 84 (Bankr. N.D. Ohio 1990); *Escondido Mission Village L.P. v. Best Prods. Co.*, 137 B.R. 114 (S.D. N.Y. 1992); *In re 611 Sixth Avenue Corp.*, 191 B.R. 295 (Bankr. S.D. N.Y. 1996) (citing additional factors); *In re Columbus One Parcel Servs., Inc.*, 138 B.R. 194 (Bankr. S.D. Ohio 1992).

9. The facts and circumstances of this Chapter 11 Case and the express terms of section 365(d)(4) of the Bankruptcy Code support the Trustee's requested extension. Because of the large and complex nature of this case, coupled with Debtor's lack of corporate records, the Trustee has not yet been able to locate all estate assets. The Trustee does not believe that he will be in a position to assume or reject leases by April 27, 2011, the current deadline to assume or reject leases of nonresidential real property.

10. Additional time is needed to determine (i) whether or not Debtor is a lessee of nonresidential real estate and (ii) whether such lease has value to the estate.

11. If the Trustee becomes aware of any leases of nonresidential real property to which the Debtor is a lessee, the Trustee will promptly make a decision as to whether such lease should be assumed or rejected by the estate. The lessor under any such lease is protected by its entitlement to an administrative expense claim on account of Debtor's post-Petition Date use of the property.

WHEREFORE, the Trustee requests that the Motion be granted, that the Court enter an order extending the Trustee's time to assume or reject nonresidential leases of real property for an additional 90 days through and including July 26, 2011, and that the Court grant the Trustee all other just and proper relief.

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CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2011, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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